

April 26, 2019

Via Email - torres.michael@epa.gov and
Certified Mail: 9414 7266 9904 2127 3973 27

Mr. Michael Torres
Remedial Project Manager
U.S. EPA, Region 6
Superfund Division (6SF-RL)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

RE: Cost Recovery Demand Letter/Bill for Collection, dated April 1, 2019
SBA Shipyard Superfund Site (A6FX)
Jennings, Jefferson Davis Parish, Louisiana
CERCLA Docket No. 06-08-16

Dear Mr. Torres:

This letter is sent on behalf of the Respondents to a certain Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study (AOC) entered in the above referenced CERCLA docket relating to the SBA Shipyard Superfund Site. We are in receipt of your above-referenced Cost Recovery Demand Letter/Bill for Collection dated April 1, 2019 (Invoice), addressed to Ms. Beth Hesse, as Project Coordinator for the Respondents to the AOC, and received on April 5, 2019. The Invoice demands payment of oversight costs incurred by EPA relating to actions undertaken pursuant to the AOC from Respondents in the amount of \$313,292.73.

By email from Ms. Hesse to you as EPA's RPM for the above referenced Site, dated April 18, 2019 (copy attached), the Respondents requested back up documentation for certain of the charges for which EPA is seeking collection in the Invoice. As of this writing, no such records have been received from EPA. Additionally, Respondents questioned why EPA had not credited Respondents for a prepayment of oversight costs in the amount of \$150,000.00, made consistent with the AOC. In that regard, Respondents requested that they be credited the amount of the prepayment in the Invoice and that the Invoice be re-issued to reflect the proper credit that should have been given to Respondents. To date, Respondents have not received any response regarding the requested credit or a re-issued invoice.

Part XVIII (Paragraph 78) of the AOC clearly and unambiguously recites that the Respondents were to make a payment of \$150,000.00 "as an **initial** payment toward Future Response Costs." See Paragraph 78.a. (emphasis added). That payment was timely made and in accordance with the AOC. Pursuant to

Paragraph 78.b. of the AOC, EPA is entitled to submit its invoice for cost recovery per the SCORPIOS Report to Respondents when the prepayment "has been exhausted...." The above referenced Invoice received by the Respondents was the first invoice sent to Respondents since the effective date of the AOC and it does not mention nor does it give proper credit to Respondents of the \$150,000.00 payment made pursuant to Paragraph 78.a. of the AOC. Accordingly, Respondents contend the above-referenced April 1, 2019 Invoice is invalid as being inconsistent with the terms of the AOC. Thus, Respondents contend that EPA is not entitled to collection of costs until a proper invoice, consistent with the unambiguous terms of the AOC, has been issued.

While Respondents contend that no costs are now due to be paid to EPA, and further that the objection procedure described in Paragraph 80 of the AOC does not apply at this time until a proper invoice is submitted by EPA, Respondents, additionally and alternatively invoke the provisions of Paragraph 80 of the AOC and object to the Invoice in its entirety until such time as a proper invoice reciting the proper prepayment credit is issued.

Similarly, as required by Paragraph 80 of the AOC, Respondents invoke the Dispute Resolution provisions of Part XV of the AOC on the grounds stated herein and in the email of April 18, 2019, that is, EPA has not properly applied the prepayment funds to Respondents and the above-referenced invoice is improperly issued and invalid. We consider the "Negotiation Period" described in Paragraph 62 of the AOC to be in effect and we look forward to resolving this dispute pursuant to Part XV of the AOC.

Please contact the undersigned with any questions or to arrange discussions under the Dispute Resolution provisions.

Sincerely,



Michael A Chernekoff

MAC

Enclosure

cc: Lydia Johnson, Chief, Enforcement Assessment Section, EPA, Region 6 – via email: johnson.lydia@epa.gov
I-Jung Chiang, Legal Counsel, EPA, Region 6 – via email: chiang.i-jung@epa.gov
Beth Hesse, Compliance Specialist, EHS – via email: Beth.Hesse@ehs-support.com

Chernekov, Mike

From: Beth Hesse <Beth.Hesse@ehs-support.com>
Sent: Thursday, April 18, 2019 4:40 PM
To: Torres, Michael
Cc: Chernekoff, Mike; Chiang, I-Jung (chiang.i-jung@epa.gov); talton.kenneth@epa.gov; johnson.lydia@epa.gov
Subject: [EXTERNAL] SBA Shipyard: Comments on Invoice/ Request for More Information

Good afternoon Mr. Torres,

We have received the US EPA Invoice dated April 1, 2019 and totaling \$313,292.73. Upon review of the invoice, I did not see any mention of the \$150,000 the PRP Group prepaid as part of the settlement agreement/ order on consent. In accordance with paragraph 78.a and 78.b, the PRP Group provided EPA with \$150,000 for deposit into the SBA Shipyard Special Account. Specifically in accordance with 78.b., ***when the amount deposited in the special account has been exhausted per the SCORPIOS Report, EPA will send the Respondents the first bill...*** It is our understanding that the EPA has **not** exhausted the SBA Shipyard Special Account and as such the Group requests that the EPA credit us for the amount of the pre-payment and that the total due for the invoice be **reduced** by \$150,000 ***in accordance with the AOC***. We request that you re-issue your invoice to show the proper credit given to the Group per the terms of the AOC.

We have also reviewed the invoice and would like to request backup for the following line items and any additional information you can provide for these third-parties' role on the project:

- Enforcement Support Services (ESS): This line item is for charges from ARS Aleunt Remediation, LLC which looks to be a consulting firm based out of Port Allen, LA. Total costs for the invoice period was \$8,059.04.
- The Environmental Services Assistance Teams (EST) line item totaled \$12,654.28 for services provided by Alion Science and Technology between November 1, 2018 and November 30, 2018.
- The Superfund Tech Assist and Response Team (START3) line item totaled \$23,071.50 for services provided by Weston Solutions, Inc. between April 29, 2017 and May 26, 2017.
- The Department of the Interior line item totaled \$24,389.64..

Please note that time is of the essence to us. Pursuant to our AOC, we must present any objections to your invoice within 21 days of receipt of your invoice, which we received on April 5, 2019. We require this information in order to properly assess whether we will have any objections to present.

Lastly, for planning purposes, what will be the frequency of future invoices?

I appreciate your timely attention to these questions given the limited timeframe we have to object any portion of invoice and submit payment.

Respectfully,

Respectfully,

Beth Hesse
Compliance Specialist

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o. Asheville, NC
w. ehs-support.com



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